

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: October 14, 2009  
HEARING TIME: 10:00 a.m.  
HEARING PLACE: New York

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IN RE

LEHMAN BROTHERS HOLDINGS, INC., et  
al.,

DEBTORS

CHAPTER 11  
CASE NO. 08-13555  
JUDGE: James Peck

(Jointly Administered)

IN RE

BNC MORTGAGE LLC,

DEBTORS

CHAPTER 11  
CASE 09-10137  
JUDGE: James Peck

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**NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY  
PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. §362 (d)**

**PLEASE TAKE NOTICE** that Deutsche Bank National Trust Company, as Trustee, by and through its attorneys, Shapiro & DiCaro, LLP, will move this Court at the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green Courtroom 601, New York, NY 10004, on October 14, 2009 at 10:00a.m., or as soon thereafter as counsel may be heard, for an Order pursuant to Bankruptcy Rule 4001 and 11 U.S.C. §362(d) terminating the automatic stay as to Movant's interest in real property known as 570 A Macon Street, Brooklyn, New York 11233, and for such and further relief as is just and proper.

**PLEASE TAKE FURTHER NOTICE** that the relief requested may be granted without hearing if no objection is timely filed and served with the Court by the deadline set forth above.

Dated: September 21, 2009  
Rochester, New York

A handwritten signature in black ink, appearing to read "Anne E. Miller-Hulbert", written over a horizontal line.

Anne E. Miller-Hulbert  
Shapiro & DiCaro, LLP  
Attorneys for Deutsche Bank National Trust  
Company as Trustee  
250 Mile Crossing Boulevard  
Suite One  
Rochester, NY 14624  
(585) 247-9000

TO: Parties in Interest on the Annexed List

**ANNEXED SERVICE LIST**

BNC Mortgage LLC  
Debtor- in- Possession  
1901 Main Street  
Irvine, CA 92624

Weil, Gotshal & Manges, LLP  
Attn: Diane Harvey, Esq., Harvey R. Miller, Esq.  
Jacqueline Marcus, Esq., Ralph I. Miller, Esq.  
Shai Y. Waisman, Esq.  
Attorney for Debtors  
767 Fifth Avenue  
New York, NY 10153

Benjamin Rosenblum, Esq.  
Jones Day  
Attorneys for Debtors  
222 East 41<sup>st</sup> St.  
New York, NY 10017

Curtis, Mallet-Prevost Colt &  
Mosle  
Attn: Jerrold Lyle Bregman, Esq., Lynn P.  
Harrison III, Esq., and Steven J. Reisman, Esq.  
Attorneys for Debtors  
101 Park Avenue  
New York, NY 10178

Hughes Hubbard & Reed  
Attn: Christopher K. Kiplok, Esq. Jeffrey S. Margolin, Esq. Neil J. Oxford,  
William R. Maguire and Sarah K. Loomis Cave, Esq.  
Attorneys for James W. Giddens, as  
Trustee for the SIPA Liquidation of  
Lehman Brothers, Inc.  
1 Battery Park Plaza  
New York, NY 10004

Office of the U.S. Trustee  
Attn: Andy Velez-Rivera, Paul  
33 Whitehall Street 21<sup>st</sup> Floor  
New York, NY 10004

Berstein Shur Sawyer & Nelson  
D. Sam Anderson, Esq.  
Attorneys for Citibank, N.A. In Its Capacity as Trustee  
100 Middle Street  
PO Box 9729  
Portland, ME 04101

Claims and Noticing Agent  
Epiq Bankruptcy Solutions, LLC Claims  
Agent f/k/a Bankruptcy Services, LLC  
757 Third Avenue 3<sup>rd</sup> Floor  
New York, NY 10017

Fried, Frank, Harris, Shriver & Jacobsen  
Attn: Gregg L. Weiner, Esq.  
Attorneys for A/P Hotel, LLC  
One New York Plaza  
New York, NY 10004

Milbank, Tweed, Hadley & McCloy, LLP  
Attn: Dennis F. Dunne, Esq.  
Attorneys for Official Committee for Unsecured Creditors  
1 Chase Manhattan Plaza  
New York, NY 10005

Quinn Emanuel Urquhart Oliver & Hedges  
Attn: Robert K. Dakis  
Attorney for Official Committee of  
Unsecured Creditors  
51 Madison Avenue 22<sup>nd</sup> Floor  
New York, NY 10010

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**MOTION FOR RELIEF FROM THE AUTOMATIC STAY  
PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. §362(d)**

Deutsche Bank National Trust Company, as Trustee, by and through its attorneys,  
Shapiro & DiCaro, LLP, for an Order vacating the automatic stay pursuant to 11 U.S.C. §362(d)  
and in support thereof, states as follows:

1. BNC Mortgage LLC filed a petition for relief under Chapter 11 of the U.S.  
Bankruptcy Code on or about January 9, 2009. An Order Directing Joint Administration of the  
Chapter 11 case of BNC Mortgage LLC with Lehman Brothers Holdings, Inc. et al. was issued  
on January 14, 2009.

2. Deutsche Bank National Trust Company; as Trustee is the holder of a first  
mortgage executed by Nneka Amobi-Onyiuke on October 25, 2005 and given to Option One  
Mortgage Corporation securing the repayment of the principal sum of \$600,000.00 due under the  
Bond/Note and granting Option One Mortgage Corporation a security interest in the Property  
commonly known as 570 A Macon Street, Brooklyn, NY 11233 (the "Property"). The mortgage

was recorded on December 4, 2005 in CRFN 2005000673059. Copies of the recorded Mortgage and Bond/Note are annexed hereto as Exhibit "A". The mortgage was assigned to Deutsche Bank National Trust Company, N.A. as Trustee by instrument dated December 27, 2007 and recorded January 17, 2008 in CRFN 2008000023894. A copy of the recorded assignment of mortgage is annexed as Exhibit "B".

3. The mortgage is in default under the Note and Mortgage for the installment due on August 1, 2007 and all subsequent monthly installments.

4. Movant commenced an action to foreclose its mortgage by the filing of a Summons and Complaint in the Kings County Clerk's Office on July 18, 2008.

5. A foreclosure title search indicated that there is a subordinate mortgage on the Property held by Mortgage Electronic Registration Systems, Inc. as nominee for BNC Mortgage, Inc. ("MERS") in the original principal amount of \$391,500.00 dated January 20, 2004 and recorded March 21, 2006 in CRFN 2006000157977.. A copy of the foreclosure title search is annexed hereto as Exhibit "C".

6. The payoff balance on the first mortgage held by Movant is approximately \$745,503.60.

7. According to the Appraisal which is annexed hereto as Exhibit "D" the fair market value of the Property is \$300,000.00 - \$320,000.00.

8. Upon information and belief, Movant's claim against the Property exceeds the value of the Property and, therefore, Debtor has no equity in the Property.

9. Upon information and belief, Debtor's subordinate mortgage adds little or no value to the bankruptcy estate and, therefore, the Property is not necessary for the reorganization of the Debtor.

10. It is respectfully submitted that good cause exists to vacate the automatic stay of  
11 U.S.C. §362 to allow Deutsche Bank National Trust Company as Trustee to maintain a  
foreclosure action on its mortgage.

**WHEREFORE**, Deutsche Bank National Trust Company as Trustee respectfully  
requests that an Order be granted vacating the automatic stay as to Deutsche Bank National Trust  
Company, as Trustee so as to permit the commencement, resumption or maintenance of  
mortgage foreclosure proceedings with respect to the Property, and for such other and further  
relief as the Court may deem just and proper.

Dated: September 21, 2009

A handwritten signature in black ink, appearing to read "Anne E. Miller-Hulbert", is written over a horizontal line.

Anne E. Miller-Hulbert  
Shapiro & DiCaro, LLP  
Attorneys for Deutsche Bank National Trust  
Company as Trustee  
250 Mile Crossing Boulevard  
Suite One  
Rochester, NY 14624  
(585) 247-9000

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**ORDER GRANTING RELIEF FROM  
THE AUTOMATIC STAY**

Upon the Motion of Wells Fargo Bank, N.A., as Trustee dated September 21, 2009 with exhibits attached thereto, with proof of service upon the Trustee, Debtor and Debtor's Attorney and the United States Trustee, and the Motion having come to be heard on October 14, 2009, it is hereby:

**ORDERED** that the automatic stay in effect pursuant to 11 U.S.C. Section 362(a) is hereby vacated for cause pursuant to 11 U.S.C. Section 362(d) as to Deutsche Bank National Trust Company, as Trustee, its agents, assigns or successors in interest so that Deutsche Bank National Trust Company, as Trustee, its agents, assigns or successors in interest may take any and all actions under applicable state law to foreclose its mortgage on the premises known as 570 A Macon Street, Brooklyn, NY 11233, and it is further



**ORDERED** that the Movant shall immediately provide an accounting to the Trustee of  
any surplus monies realized as a result of the foreclosure sale.

Dated: \_\_\_\_\_, 2009  
New York, NY

Enter:

\_\_\_\_\_  
Honorable James Peck  
United States Bankruptcy Judge

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**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK     )  
                                  )ss:  
COUNTY OF MONROE    )

I, Shannon Thompson, being sworn, says, I am not a party to this action; I am over 18 years of age, I reside in Rochester, New York.

On September 21, 2009 I served the within Notice of Motion and Motion for Relief from Automatic Stay upon the parties in interest set forth below:

TO     BNC Mortgage LLC  
        Debtor- in- Possession  
        1901 Main Street  
        Irvine, CA 92624

Weil, Gotshal & Manges, LLP  
Attn: Diane Harvey, Esq., Harvey R. Miller, Esq.  
Jacqueline Marcus, Esq., Ralph I. Miller, Esq.  
Shai Y. Waisman, Esq.  
Attorney for Debtors  
767 Fifth Avenue  
New York, NY 10153

Benjamin Rosenblum, Esq.  
Jones Day  
Attorneys for Debtors  
222 East 41<sup>st</sup> St.  
New York, NY 10017

Curtis, Mallet-Prevost Colt &  
Mosle  
Attn: Jerrold Lyle Bregman, Esq., Lynn P.  
Harrison III, Esq., and Steven J. Reisman, Esq.  
Attorneys for Debtors  
101 Park Avenue  
New York, NY 10178

Hughes Hubbard & Reed  
Attn: Christopher K. Kiplok, Esq. Jeffrey S. Margolin, Esq. Neil J. Oxford,  
William R. Maguire and Sarah K. Loomis Cave, Esq.  
Attorneys for James W. Giddens, as  
Trustee for the SIPA Liquidation of  
Lehman Brothers, Inc.  
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Office of the U.S. Trustee  
Attn: Andy Velez-Rivera, Paul  
33 Whitehall Street 21<sup>st</sup> Floor  
New York, NY 10004

Berstein Shur Sawyer & Nelson  
D. Sam Anderson, Esq.  
Attorneys for Citibank, N.A. In Its Capacity as Trustee  
100 Middle Street  
PO Box 9729  
Portland, ME 04101

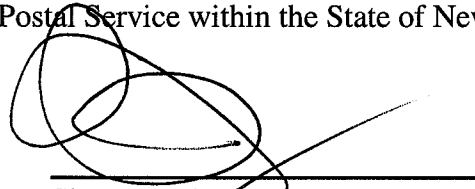
Claims and Noticing Agent  
Epiq Bankruptcy Solutions, LLC Claims  
Agent f/k/a Bankruptcy Services, LLC  
757 Third Avenue 3<sup>rd</sup> Floor  
New York, NY 10017

Fried, Frank, Harris, Shriver & Jacobsen  
Attn: Gregg L. Weiner, Esq.  
Attorneys for A/P Hotel, LLC  
One New York Plaza  
New York, NY 10004

Milbank, Tweed, Hadley & McCloy, LLP  
Attn: Dennis F. Dunne, Esq.  
Attorneys for Official Committee for Unsecured Creditors  
1 Chase Manhattan Plaza  
New York, NY 10005

Quinn Emanuel Urquhart Oliver & Hedges  
Attn: Robert K. Dakis  
Attorney for Official Committee of  
Unsecured Creditors  
51 Madison Avenue 22<sup>nd</sup> Floor  
New York, NY 10010

the addresses designated by the foregoing individuals for that purpose by depositing a true copy  
of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the  
exclusive care and custody of the United States Postal Service within the State of New York.

  
Shannon Thompson  
Legal Assistant

Sworn to before me this  
21st day of September 2009,



Notary Public  
Anne E. Hulbert  
Qualified in Monroe County  
Commissions Expires May 31, 2010